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W.P.No.32118 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.10.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.32118 of 2024
and W.M.P.No.34878 of 2024

M/s Leema Towers Private Ltd.,
Represented By Its Authorized Signatory
C.Ganesan

... Petitioner

-Vs-

1. The Director Of Town And Country Planning,
2, 3 And 4th Floor, B,
CMDA Office Campus,
E And C,
Market Road,
Koyambedu, Chennai-600 107.

2. The Member Secretary/Executive Officer,
Pollachi Local Planning Authority,
Pollachi, Coimbatore District.

3. The Commissioner,
Pollachi Municipality,
Pollachi-642 001.

... Respondents

Prayer : Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Declaration, declaring that the reservation made for public purpose in respect of the petitioner's land comprised in T.S.No.760/1 to an extent of 2.633.0 Sq.mt at Ward-B, Block No.13, Pollachi Town, Coimbatore District under Pollachi Detailed Development Plan No.12 is



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deemed to be lapsed and released from the reservation for public purpose in the light of Section 38 of the Tamil Nadu Town and Country Planning Act, 1971 (TN Act 1974).

For Petitioner : Mr.V.Anandhamurthy
For R1 : Mr.S.Arumugam
Government Advocate
For R2 and R3 : Mr.B.Anand
Standing Counsel

ORDER

This writ petition has been filed for declaration declaring that the reservation made for public purpose in respect of the petitioner's land comprised in T.S.No.760/1 to an extent of 2.633.0 Sq.mt at Ward-B, Block No.13, Pollachi Town, Coimbatore District under Pollachi Detailed Development Plan No.12 is deemed to be lapsed.

2. Heard both sides and perused the materials available on record.

3. The petitioner purchased the land in T.S.No.760/1 to the extent of 6.50 acres from one Karpagam Balaji vide Sale Deed dated 18.01.2019 in Document No.1535/2019 on the file of Sub-Registrar, Pollachi. All the revenue records were mutated in favour of the petitioner.



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4. While being so, the town planning authorities had earmarked the portion of the petitioner's land comprised in T.S.No.760/1 to an extent of 2.633.0 sq.mt, at Ward – B, Block No.13, Pollachi Municipality for the Pollachi Detailed Development Plan No.12 for public purpose, which was notified in the year 1996. The aforesaid plan is for the proposed scheme roads and also for public purpose. It was expected that the Government of Tamil Nadu would acquire these lands for the formation of proposed plan as provided under the provisions of Chapter IV of the Town and Country Planning Act, 1971. However, even till today, no action has been taken to acquire the subject land. As a result, the petitioner is not able to deal with the property effectively.

5. Further, when the Pollachi Detailed Development Plan No.12 for public purpose was proposed and for the said purpose, the portion of the land was also reserved for the public purpose in the year 1996. However, so far, the respondents did not take any action to acquire the said land under the Tamil Nadu Town and Country Planning Act, 1971, within a period of three years and subsequently, amended as five years and the proposed development plan has been kept by the respondents in cold storage for the past 20 years.



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6. On written instructions received from the first respondent and the learned Government Advocate appearing for the first respondent submitted that the subject land is reserved for public purpose in the approved Pollachi Detailed Development Plan No.12. However, so far no acquisition proceeding has been initiated and as such, the petitioner has to make a request before the first respondent for release of the land.

7. As per Section 38 of the Town and Country Planning Act, 1971, if a particular land is not acquired by agreement, such land shall be deemed to be released for such reservation, allotment or designation. After completion of the year 1994, no further proceedings were initiated for acquiring the lands.

8. It is relevant to extract the provisions under Sections 37 and 38 of the Tamil Nadu Town and Country Planning Act, 1971 as follows:-

“37. Power to purchase or acquire lands specified in the development plan.- (1) Where after the publication of the notice in the Tamil Nadu Government Gazette of preparation of a regional plan, master plan, detailed development plan or a new town development plan, as the case may be, any land is required, reserved or designated in such plan, the appropriate planning authority may, either enter into agreement with any person for the acquisition from him by purchase of any land which may be acquired under section 36 or make an application to the Government for acquiring such land under the Land Acquisition



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Act, 1894 (Central Act I of 1984):

Provided that if the value of such land exceeds fifty thousand rupees the appropriate planning authority shall not enter into such agreement without the previous approval of the Government.

(2) On receipt of an application made under sub-section (1), if the Government are satisfied that the land specified in the application is needed for the public purpose specified therein, they may make a declaration to that effect in the Tamil Nadu Government Gazette, in the manner provided in section 6 of the Land Acquisition Act, 1894 (Central Act I of 1894), in respect of the said land. The declaration so published shall, notwithstanding anything contained in the said Act, be deemed to be a declaration duly made under the said section 6 of the said Act:

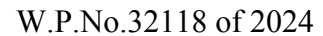
Provided that no such declaration in respect of any particular land covered by a notice under section 26 or section 27 shall be made after the expiry of three years from the date of such notice.

(3) On the publication of such declaration, the Collector of the district within whose jurisdiction the land is situate, shall proceed to take order for the acquisition of such land under the said Act; and the provisions of that Act shall, so far as may be, apply to the acquisition of the said land with the modification that the market value of the land shall be the market value prevailing on the date of publication of the notice in the Tamil Nadu Government Gazette under section 26 or section 27, as the case may be.

38. Release of land.- *If within three years from the date of the publication of the notice in the Tamil Nadu Government Gazette under section 26 or section 27-*

(a) no declaration as provided in sub-section (2) of section 37 is published in respect of any land reserved, allotted or designated for any purpose specified in a regional plan, master plan, detailed development plan or new town development plan covered by such notice; or

(b) such land is not acquired by agreement, such land shall be deemed to be released from such reservation, allotment or



9. In this regard, already the Hon'ble Division Bench of this Court held in W.A (MD) No.485 of 2020 has held that the scheme had lapsed by virtue of Section 38 of the Act. The relevant portions in the judgment are extracted hereunder :-

“11. As rightly pointed out by the learned counsel appearing for the respondents/writ petitioners that the counter affidavit proceeds on the merits of the claim and in no way deal with deemed lapse and in the considered opinion of this Court, the learned Judge, on correct appreciation of facts and by applying the legal position as enumerated in the above said judgment, allowed the writ petition. This Court, on going through the reasons assigned in the impugned order, is of the considered view that there is no infirmity or error apparent on the face of the record for the reason assigned by the learned Single Judge for allowing the writ petition and finds that the writ appeal lacks merits.

12. It is also brought to the knowledge of this Court that the writ appeal filed by the official respondents in WA(MD) No.340 of 2020, against the order dated 27.02.2017 in W.P.(MD) No.14456 of 2014 was also dismissed on 02.03.2020.”

10. The above Judgment is squarely applicable to the case on hand, since the subject land was notified under Section 37 of the Tamil Nadu Town and Country Planning Act, 1971, in the year 1994. However, the respondents did not take any steps to acquire the subject land for its purpose even till today. Therefore, by operation of Section 38, the scheme itself lapsed and the subject



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land has to be released from the detailed development plan scheme.

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11. In view of the above, the reservation made for public purpose in respect of the petitioners' land comprised in T.S.No.760/1 to an extent of 2.633.0 Sq.mt at Ward-B, Block No.13, Pollachi Town, Coimbatore District under Pollachi Detailed Development Plan No.12 is lapsed.

12. Accordingly, this writ petition is allowed. Consequently, connected Miscellaneous petition is closed. There shall be no order as to costs.

28.10.2024
(2/2)

Internet: Yes
Index : Yes/No
Speaking/Non Speaking order
Neutral Citation : Yes/No
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G.K.ILANTHIRAIYAN. J.

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To

1. The Director Of Town And Country Planning,
2, 3 And 4th Floor, B,
CMDA Office Campus,
E And C,
Market Road,
Koyambedu, Chennai-600 107.
2. The Member Secretary/Executive Officer,
Pollachi Local Planning Authority,
Pollachi, Coimbatore District.
3. The Commissioner,
Pollachi Municipality,
Pollachi-642 001.

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